IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15058 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S. DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESHKUMAR @ CHAMAN S/O. BABUBHAI PATEL
Versus
COMMISSIONER OF POLICE AHMEDABAD CITY AND OTHERS

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Appearance :
MR BC DAVE for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 30/08/2005

ORAL JUDGMENT

1. The petitioner, who is detained vide order dated 17.06.2005 under the provisions of Subsection (1) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') passed by the Commissioner of Police, Ahmedabad City, has challenged the order by filing this petition under Article 226 of the Constitution of India. It is stated in the order of detention that the petitioner is indulging into anti-social and criminal activities and certain instances have been given in the order of detention, which indicate about the registration of offences punishable under Sections 365, 395, 397 and 506(2) under Indian Penal Code bearing I.C.R.No.273 of 2005 registered with Amraiwadi Police Station on 30th April, 2005 and another offence registered bearing I-C.R.No. 276 of 2005 for the offences punishable under Sections 365,395, 397, 506(2) and 120 (b) of the Indian Penal Code and also under Section 25(i) (b) of the Arms Act of dated 01.05.2005. The detaining authority has taken into

consideration two incidents by which it is referred that due to criminal act on the part of the detenue, there was disturbance of the public order and thus an atmosphere of fear and terror was created. That the activities of the detenue are found to be prejudicial and remedy under ordinary law is not sufficient enough and, therefore, to prevent the detenue from indulging into such activities, the authority has passed the order of detention.

2. The learned advocate for the petitioner Shri B.C.Dave has challenged the above order of detention on various grounds and mainly on the aspect of subjective satisfaction of the detaining authority being vitiated on the ground of non-application of mind to the relevant materials germain to the ground of passing the order of detention. According to him, there is nothing on record to suggest that the bail application that might be filed by the petitioner, the same will be granted and the petitioner will be released on bail. He has submitted that in the penultimate

paragraph of the order of detention 17.06.2005 it is stated that so far as bail application qua offences registered at Amraiwadi Police Station bearing C.R.No.276 of 2005 dated 01.05.2005, the Court has not enlarged the detenue on bail. Therefore, according to him, the presumption and prognosis of the detaining authority that in event of the detenue preferring bail application, the same will be granted by the Court is clear non-application of mind and the detaining authority has failed to come to the conclusion by ignoring relevant facts and the consequence thereof.

The learned advocate for the petitioner relied upon some decisions, on the basis of which he has submitted that the order of detention is required to be quashed and set aside since the detaining authority has failed to consider the relevant aspect and material before arriving at the subjective satisfaction. He also submitted that mere affirmation in the affidavit in reply about the detenue being a dangerous person required to be detained under the provisions of the PASA Act is

not sufficient enough to justify the order of detention and even in the affidavit in reply also the deponent has failed to explain the relevant and cogent materials, on the basis of which the subjective satisfaction about the petitioner preferring bail application, grant of such bail application by the Competent Court and release of the detenue in such events, and, thereafter likelihood of petitioner detenue to indulge into criminal and anti-social activities. In such circumstances, according to Shri B.C.Dave, learned advocate for the petitioner, the order of detention is vitiated.

He has also argued against such alleged grounds of anti-social activities of the detenue and which is prejudiced to the public order and disturb the public order. However, in view of his earlier and first contention, he has submitted that the said ground is sufficient enough to declare the order of detention as vitiated.

3. Smt. H.B.Punani, learned Assistant Government

Pleader, submitted that the subjective satisfaction of the detaining authority was arrived after carefully scrutiny, study and examination of relevant materials placed before the detaining authority and the activities of the detenue being found anti-social, likelihood to disturb the piece and tranquillity and also the public order and having considered the antecedents of the detenue the order of detention is passed in proper exercise of power under the Act.

4. Having considered the rival submissions of the parties, I am likely to accept the submissions of Shri B.C.Dave, learned advocate for the petitioner for the reasons that the detaining authority has failed to explain the aspect about relevant materials on the basis of which the subjective satisfaction is reached, particularly for the fact about detenue being in judicial custody and refusal of the bail application by the Competent Court qua the offence registered with Amraiwadi Police Station as narrated in the second part of the order of detention. The refusal of Bail by the court and

still to arrive at conclusion about release of the detenue on bail, indicates non application of mind on the part of the authority, vitiate subjective satisfaction and hence impugned order is illegal. Further, there must be cogent materials before the officer passing the detention order that the detenue is likely to be released on bail. The said factor has carefully explained in the case of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others reported at AIR 2000 SC 3675.

The another decision has squarely covered the aspect reported at GLR 2003 (4) 2769 in the case of Usmangani Ismailbhai Minyana Vs. Commissioner of Police, Ahmedabad and ors. wherein it is stated in Para:5 that “From the grounds of detention and the affidavit in reply, it is spelt out and noticed that the detaining authority has passed the detention orders at the time when the detenues were in judicial custody. It will be interesting to mention at this stage that the detaining authority, with regard to the factum of

judicial custody of each detenue, has observed that there is likelihood of the detenue moving an application for bail in the Court of law, but this is assumed without attaining any satisfaction for reaching the conclusion for passing the detention order and even in absence of any cogent material. Nevertheless, it has been observed by the detaining authority in each case that though the detenue is in judicial custody while passing the detention order, he is likely to be released on bail. In the opinion of the Court, the excuse and the pretext that there is likelihood of presentation or submission of an application for being enlarged on bail by the detenue, ipse-facto, cannot constitute a subjective satisfaction for reaching the conclusion that there is a fit case for passing the detention order. Insofar as the provisions of Section 3 of the PASA Act are concerned, there must be cogent material available with the officer passing the detention order to the effect that the detenue is likely to be enlarged on bail. Obviously, inference must be drawn from the available material on record and must not be ipse

dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is “likelihood to be released on bail” is different from “likelihood of his moving an application for bail”. The reasoning for likelihood of moving an application of bail by the detenue is obviously different from the likelihood to be enlarged on bail. Such a reasoning, in the opinion of the Court, cannot be said to be sufficient compliance of the requirements and safeguards as laid down under the PASA Act and various decisions of this Court as well as Hon'ble Supreme Court.“

5. In view of the law laid down by the Apex Court as relied on by this Court in subsequent decision, the concerned officer is duty bound to arrive at the subjective satisfaction on the basis of relevant and cogent materials existing as on the date of passing the order of detention. Not only that the subjective satisfaction cannot be in the realm of

imagination but to be based on relevant facts. As the apex court has rightly observed that ipse dixit of the concerned officer cannot be formed a basis for subjective satisfaction of the authority. The above mentioned two judgments and the law laid down therein, have clearly applicability to the facts of the present case, and, therefore, exercise of power by the detaining authority under the provisions of the Act is illegal and contrary to the provisions under Article 22 of the Constitution of India.

6. The order of detention dated 17.06.2005 passed by the respondent no.1, is quashed and set aside as there is total non-application of mind on the part of the detaining authority before arriving at the subjective satisfaction.

7. The detenue Rajeshkumar @ Chaman S/o. Babubhai Patel is therefore ordered to be set at liberty forthwith, if not required in any other offence by any other authority.

8. Rule is made absolute to the aforesaid extent

with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

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